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In The
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1981

CITY OF AKRON

vs.

AKRON CENTER FOR REPRODUCTIVE HEALTH

AKRON CENTER FOR REPRODUCTIVE HEALTH

vs.

CITY OF AKRON

PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MOTION FOR LEAVE FOR AMICUS CURIAE TO PARTICIPATE IN ORAL ARGUMENT

ALAN ERNEST
P.O. Box 2471
Washington, D.C. 20013
(703) 437- 1178

COUNSEL FOR AMICUS CURIAE

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MOTION FOR LEAVE FOR AMICUS CURIAE TO PARTICIPATE IN ORAL ARGUMENT

The Court is moved to allow the amicus curiae, THE LEGAL DEFENSE FUND FOR UNBORN CHILDREN, to participate in oral argument for the purpose of presenting the evidence which shows that Roe v Wade, 410 U.S. 113, is a mistake of law, and must be expressly overruled. This would dispose of all issues raised by the parties.

Only the amicus curiae has presented this issue; the parties did not do it. The grounds for determining that Roe v Wade is a mistake of law are presented in part I, infra.

I.

THE AMICUS CURIAE MOVES THE COURT TO ALLOW ORAL ARGUMENT THAT ROE v. WADE IS A MISTAKE OF LAW. THE PARTIES HAVE NOT DONE THIS. THE TWO GROUNDS PRESENTED ARE SO FUNDAMENTAL THAT IF THE COURT AGAIN AFFIRMS ROE v WADE, BUT AGAIN REFUSES TO HEAR THE TWO GROUNDS, THEN IT CAN NOT BE PRETENDED THAT IT IS ANY LONGER THE GOVERNMENT OF THE UNITED STATES, OR ANY GOVERNMENT OF CONSTITUTION AND LAWS.

A. Ground One

ROE v WADE IS A MISTAKE OF LAW BECAUSE THE COURT ASSERTED, WITHOUT ANY INVESTIGATION OF THE LAW OF MURDER, TO LEGALIZE KILLINGS WHICH HAD BEEN DEFINED AS MURDER SINCE LONG BEFORE THE ADOPTION OF THE FOURTEENTH AMENDMENT.

Without any examination of the law of murder, this Court in Roe v Wade asserted to legalize killings which had been defined as murder since long before the adoption of the Fourteenth Amendment.[1/] The Court has Hitler-like asserted to legalize murder. This is mere historical fact.

B. Ground Two

ROE v WADE IS A MISTAKE OF LAW SINCE IT IS BASED ON FALSE EVIDENCE, AND A FATAL REVERSAL OF THE BURDENS OF PROOF, AND THE UNBORN VICTIMS ARE BEING EXTERMINATED IN VIOLATION OF THE CONSTITUTION AND LAWS OF THE UNITED STATES.

The Supreme Court's conclusion in Roe v Wade, 410 U.S. at 158, "that the word 'person,' as used in the Fourteenth Amendment, does not include the unborn," is based on a fatal reversal of the burdens of proof and persuasion, and indispensable parts of the Court's supporting evidence are fabricated and false.[2/] The evidence

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1./ This evidence was incorporated in the Amicus Brief.

2./ This evidence was incorporated in the Amicus Brief and is summarized below for convenience. This evidence conclusively proves that the unborn are persons whose lives are protected by the Fourteenth Amendment, as follows:

A.

Even the Supreme Court admitted in Roe v Wade, 410 U.S. at 156-157, that if the

establishes, beyond the legal power of any judge of the United States to deny, that the unborn are persons within the language and meaning, the very express words as well as the spirit, of the

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unborn child "is a person within the language and meaning of the Fourteenth Amendment," then the case for a constitutional right to kill the unborn, as claimed in Roe v Wade, "of course, collapses, for the fetus' right to life would then be guaranteed specifically by the Amendment."

B.

The terms of the Fourteenth Amendment ("nor shall any state deprive any person of life ... without due process of law")(emphasis added) are "universal in their application." Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886). The words "any person" are universal and admit of no exceptions whatever. Thus, on their face, the words "any person" include the unborn, as everyone else.

C.

The holdings of Chief Justice John Marshall show that the Supreme Court had no lawful power to construe an exception to express, universal terms (such as "any person") unless the court can show that "the absurdity and injustice of applying the provision to the case, would be so monstrous, that all mankind would, without hesitation, unite in rejecting the application." Sturges v Crowninshield, 4 Wheat. 122, 202-3. And the Court must further prove that "had this particular case been suggested" to the framers, "the language would have been so varied as to exclude it." Dartmouth College v Woodward, 4 Wheat. 518, 644-5. Chief Justice Marshall founded the universality of this court's own jusisdicton on these very rules. Cohen v Virginia, 6 Wheat. 264, 378-380. Thus, the Court bore an extraordinary burden to prove that if the case of the unborn had been brought to the attention of the framers of the Fourteenth Amendment, they would have varied the language to exclude the unborn and the Amendment would have been changed to effectively read that "Nor shall any state deprive any person, except unborn persons, of life ... without due process of law.

D.

The Supreme Court presented false evidence in Roe v Wade to support its conclusion that "the word 'person,' as used in the Fourteenth Amendment, does not include the unborn." Roe v Wade, 410 U.S. at 158. And, but for the false evidence, there is not even a credible foundation, much less a compelling one, for creating an exception to the universal terms "any person" and denying the protection of the Amendment for the lives of the unborn.

At the time the Fourteenth Amendment was adopted in 1868, most states had already enacted positive statutes which made abortion a crime unless it were necessary to save the life of the mother. Within a few years, these criminal abortion statutes were virtually universal.

Consequently, any theory of a constitutional right to kill the unborn, as claimed in Roe v Wade, faced an impossible contradiction: How is it possible that the people who framed and adopted the Fourteenth Amendment had enacted positive criminal statutes to protect unborn life, but, at the same time, without a single word of explanation, intended to imply an exception to the express, universal terms "any person," and to imply a constitutional right to kill the unborn?

To resolve that fatal contradiction, the Court asserted the hypothesis that when the criminal abortion statutes were first enacted, the laws were not intended to protect unborn life, but rather were only intended to protect the mother. The hypothesis was falsely fabricated and used as follows.

1.

The Supreme Court first asserted, "When most criminal abortion laws were first enacted, the procedure was a hazardous one for the woman." Roe v Wade, 410 U.S. at 148. This is asserted as fact.

The only authority cited by the Supreme Court to prove this assertion of fact was a 20th century medical history book, Haagensen and Lloyd, A Hundred Years of Medicine 19 (1943), cited in Roe v Wade, supra, at 148 n.43. But this book merely described the hazards of major surgery in general prior to Lister's discovery of antiseptics. The reference did not even mention abortion.

However, the 19th century authorities throughout the Western world prove the

of the Fourteenth Amendment, and thus the lives of the unborn are protected by the Amendment.

Court's assertion of fact to be false. These obstetric authorities, based upon their own experience in performing abortions, and from hundreds of cases reported from around the world, declared that the abortion operation, the operation of artifically evacuating the fetus from the womb, was "perfectly safe" to the mother. 2 T. Denman, M.D., An Introduction to the Practice of Midwifery 96 (1802). Or, "experience has proved that the dangers of the operation are reduced to a small matter." A.L.M. Velpeau, A Complete Treatise on Midwifery 530 (4th Am. ed. 1852). Or, "to the mother there is very little danger." H.L. Hodge, M.D., The Principle and Practice of Obstetrics 293 (1864). In short, the 19th century obstetric authorities prove the Supreme Court's assertion of fact to be false.

The Supreme Court never identified the "hazardous" abortion "procedure" to which it was referring. Actually the 19th Century physicians used the ancient method: "the membranes of the ovum are punctured," which permitted "the discharge of the waters," which induced the "action of the uterus" to "come on," which resulted in the expulsion of the fetus from the womb. 2 Denman, supra, 99. One 19th Century physician traced this operation back almost 2000 years. F. Ramsbotham, M.D., The Principles and Practice of Obstetric Medicine 724 (4th ed. 1856).

Consequently, the 19th Century physicians were using an ancient abortion procedure which they described as not hazardous to the mother. The Supreme Court did not examine even one single 19th Century medical textbook. And those medical texts prove its assertion of fact, "When most criminal abortion laws were first enacted, the procedure was a hazardous one for the woman," is false.

3.

The Supreme Court next asserted, "Abortion mortality was high." Roe v Wade, supra, at 149. This is also asserted as fact. The Supreme Court made this assertion without any authority to support it. It is likewise false. The 19th Century obstetric authorities expressly asserted that the abortion operation was not deemed to be hazardous to the mother. Consequently, the Court's assertion of fact, "Abortion mortality was high," is false.

4.

Upon these two false assertions of fact, the Supreme Court falsely infers that "a State's real concern in enacting a criminal abortion law was to protect the pregnant woman, that is, to restrain her from submitting to a procedure that placed her life in serious jeopardy." Roe v Wade, supra, at 149. Thus a false inference is drawn from false assertions of fact.

5.

From the false inference that the criminal abortion laws were not intended to protect the lives of the unborn, the Court further falsely inferred that the framers of the Fourteenth Amendment did not intend it to protect the lives of the unborn, "that the word 'person,' as used in the Fourteenth Amendment, does not include the unborn." Roe v Wade, 410 U.S. at 158. This false conclusion is drawn from a false inference which is drawn from false facts.

6.

The Supreme Court bore the extraordinary burden of demonstrating that the absurdity and injustice of including the unborn within the universal terms "any person" would be "so monstrous, that all mankind would, without hesitiation, unite in rejecting the application." Sturges v Crowninshield, supra. And the Court bore the extraordinary burden of proving to a demonstration that if the case of the unborn had been presented to the Framers of the Fourteenth Amendment, "the language would have been so varied as to exclude it." Dartmouth College v. Woodward, supra.

But, the Court did not cite even one single 19th Century authority which expressly agreed with its conclusion that "the word 'person,' as used in the Fourteenth Amendment, does not include the unborn," much less one that expressly agreed that there was a constitutional right to kill the unborn as asserted in Roe v Wade. And the Court's assertion that the abortion laws were not intended to protect the lives of the unborn is shown to rest on false evidence. The authorities in law, medicine, and medical jurisprudence leave no doubt that these abortion laws were originally intended to protect the lives of the unborn. These statutes show that the framers and adopters not only intended the universal terms "any person" to include the unborn, but that they had enacted criminal laws to protect them in fact.

E.

Not only are indispensable parts of the Court's evidence false, but the Court

II.

THE U.S. SUPREME COURT IS WILLFULLY USING UNCONSTITUTIONAL PROCEDURES TO MAINTAIN THE ROE v WADE KILLINGS

The Supreme Court has decided many abortion cases on the merits, but the Court willfully (1) refused to allow counsel to especially represent the victims being killed, and(2) refused to allow the evidence in Roe v Wade, which it used to condemn the victims to death, to be cross examined, and (3) refused to allow new evidence to be presented on behalf of the victims being killed to establish their right to life under the U.S. Constitution.[3/] Under the Court's own rulings these procedures are unconstitutional[4/] and criminal.[5/]

III.

THE U.S. SUPREME COURT HAS CONFESSED IN COURT THAT IT IS GUILTY OF CRIMINAL EXTERMINATION, INCLUDING MASS MURDER, AND THIS IS THE LEGAL EQUIVALENT OF THE EXPRESS OVERRULING OF ROE v WADE.

For the 57th time, the Supreme Court is accused of mass murder. For the 81st time, the Supreme Court is accused of exterminating millions of victims in violation of the Fourteenth Amendment and 18 U.S.C. 242. But the Court has not denied the charges and proved

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also fatally reversed the burdens of proof and persuasion described by Chief Justice Marshall, supra. The Court first decreed a constitutional right to kill the unborn. Roe v Wade, supra, at 153. Then, incredibly, after that death sentence was imposed, the Court subsequently examined the question of the inclusion of the unborn within the terms "any person." Roe v Wade, supra, at 158-9. Thus, in accordance with the compelling interest test, once the Court decreed a constitutional right to kill the unborn, the burden was shifted to the unborn to demonstrate the compelling justification of the criminal abortion statutes; that is, the burden was on the unborn to affirmatively prove that they were persons within the terms "any person " in the Amendment. And the Court placed the burden on the unborn to prove with "assurance" (that is, to make certain, and put beyond doubt) that they were persons within the Amendment, or the unborn would be excluded. This reversal of the burdens was not only fatal, but monstrous. Could the Court first decree a right to kill Jews, then place the burden on the Jews to prove with "assurance" that they were persons protected by the Constitution, and then upon false evidence or trifling objections, permit all Jews to be exterminated?

Rather the most difficult evidentiary burden in constitutional law was on the Court to prove with "assurance" that the unborn were not included within the terms "any person," or the unborn would be included. And the case for the unborn is far stronger than for many other groups, such as "strangers and aliens" and "corporations" which were included within the terms "any person" without the need of any independent corroborating evidence since the terms "any person" are "universal in their application." Yick Wo v Hopkins, supra. The terms "any person" include the unborn on their face; and the framers and adopters had enacted criminal statutes to protect the lives of the unborn in fact.

F.

The Supreme Court has violated the very letter of the Constitution, as well as its spirit, and condemned to death those victims whom the Constitution endeavors to preserve.

3./ Cases presented in Amicus Brief

4./ Cases presented in Amicus Brief

5./ Any judge who, under color of law, willfully deprives anyone of constitutional rights can be criminally prosecuted. Imbler v Pachtman, 424 U.S. 409. Since the unborn are persons within the terms "any person," their lives are, by statutory definition, also protected by 18 U.S.C. § 242.

them false. Under the Court's own rulings, its silence in the face of accusation, while looking at photos of the killed victims, [6/] can be taken as a confession that the charges are true.[7/] Such judicial conduct is the admission that Roe v Wade is a mistake of law as certainly as the express overruling of Roe v Wade. And this tacit overruling has the same legal consequences as an express overruling.[8/]

IV.
CONCLUSION

The court is moved to allow Amicus to appear at oral argument to present the evidence which proves that Roe v Wade is a mistake of law and must be expressly overruled.

Alan Ernest

Alan Ernest, Counsel for Amicus

6./ A photograph of the type killings complained about is included herein as Exhibit 1, infra A-1.

7./ Under "the tacit confession rule," McCormick on Evidence §§ 161, 171 (1972), failure to deny a charge is equivalent to a confession that the charge is true. 4 Wigmore, Evidence §§1071-1072(Chadborn rev. 1972). "Underlying the ruie is the assumption that human nature prompts an innocent man to deny false accusations and consequently a failure to deny a particular accusation tends to prove belief in the truth of the accusation." McCormick, supra, §161. And this Court has consistently recognized that ... silence in the face of accusation is a relevant fact. .... Silence is often evidence of the most persuasive character. Baxter v. Palmigiano, 425 U.S. 308, 319 (1976). And the rule is ancient. As Socrates cross-examined at his trial over 2000 years ago, "you are silent and have nothing to say. But is this not rather disgraceful, and a very considerable proof of what I was saying." Apology in Plato 41, 45 (Jowett transl. 1942). And concerning the Court's silence in the face of accusation year after year while the victims are being killed- "Silence gains more probative weight where it persists in the face of accusation, since it is assumed in such circumstances that the accused would be more likely than not to dispute an untrue accusation." United States v Hale, 422 U.S. at 176.

8./ The Supreme Court asserted to legalize killings which violated positive criminal statutes, including murder statutes. If Roe v Wade were a mistake of law, then all the killings since 1973 can be criminally prosecuted. The ex post facto provisions of the U.S. Constitution do not apply to judicial decisions which are a mistake of law. Ross v Oregon, 227 U.S. 150 (1913). The general rule is that mistake of law is no excuse for breaking the law. Perkins, Criminal Law 90 (2d ed. 1969). The narrow exception of reasonable reliance on a court opinion thereafter determined to be a mistake of law does not apply to homicide cases. Model Penal Code, Tentative Draft No. 4, Comments §2.04, at 138. In any event, "after a warning," such as given herein, a defendant can not claim that his reliance was reasonable. Id., at 138. And one can be criminally implicated in homicide by mere words of encouragement while the victims are being killed in violation of positive criminal statutes. Lafave and Scott, Criminal Law §§ 61, 64(1972). One must literally hazard life and liberty to argue in favor of the Roe v Wade killings in violation of criminal statutes. Blind faith in "the supreme judge" is no defense to criminal prosecution for complicity in murder. United States v. Altstoetter ("The Justice Case"), 3 Trials of War Criminals before the Nuremberg Military Tribunals.

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